IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

Atty Dkt. JSP-723-1413

C#   M#

Confirmation No. 4744

JACKSON et al.

TC/A.U.: 3627

Serial No. 10/628,555

Examiner: Frenel, Vanel

Filed: July 29, 2003

Date: September 23, 2008

Title: SYSTEM AND METHOD FOR DYNAMIC ALLOCATION OF PRODUCTS TO RETAILERS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**
Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting $510.00 (1401)/$255.00 (2401) $
applicant's claim(s).

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application $510.00 (1402)/$255.00 (2402) $ 510.00

☐ Credit for fees paid in prior appeal without decision on merits   -$ (   )

☐ A reply brief is attached.   **(no fee)**

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s)   One Month Extension $120.00 (1251)/$60.00 (2251)
Two Month Extensions $460.00 (1252)/$230.00 (2252)
Three Month Extensions $1050.00 (1253/$525.00 (2253)
Four Month Extensions $1640.00 (1254/$820.00 (2254) $

    ☐ "Small entity" statement attached.

Less   month extension previously paid on   -$(   )

TOTAL FEE ENCLOSED $ 510.00

## ☒ CREDIT CARD PAYMENT FORM ATTACHED.

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any <u>deficiency</u>, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A <u>duplicate</u> copy of this sheet is attached.

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By Atty: Joseph S. Presta, Reg. No. 35,329

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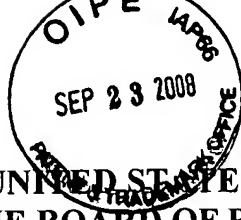
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JACKSON et al.   Atty. Ref.: 723-1413

Serial No. 10/628,555   TC/A.U.: 3627

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For: SYSTEM AND METHOD FOR DYNAMIC ALLOCATION OF

PRODUCTS TO RETAILERS

* *

September 23, 2008

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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APPEAL BRIEF

Sir:

Appellant hereby **appeals** to the Board of Patent Appeals and Interferences from

the last decision of the Examiner.

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(I)   REAL PARTY IN INTEREST

The real party in interest is Nintendo Co., Ltd., a corporation of the country of

Japan.

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(II)   RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related

appeals, interferences, or judicial proceedings (past or present), which will directly affect

or be directly affected by or have a bearing on the Board's decision in this appeal.

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(III) <u>STATUS OF CLAIMS</u>

Claims 1-9 and 11-23 are pending and have been rejected. Claim 10 previously was cancelled. No claims have been substantively allowed. The rejection of claims 1-9 and 11-23 is being appealed.

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(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the Final Rejection.

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(V) SUMMARY OF CLAIMED SUBJECT MATTER

Each independent claim, each dependent claim argued separately, and each claim having means plus function language is summarized below including exemplary reference(s) to page and line number(s) of the specification.

Claim 1 relates to a system for use by a sales administrator for allocating product to a plurality of locations (e.g., 100 in Fig. 1; paragraphs 5 and 17-19). An accounts interface allows the sales administrator to define accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations (e.g., "Create named groups of accounts" in Fig. 6; Fig. 18; paragraphs 30 and 82-83). A products interface allows the sales administrator to define products for allocation among said plurality of locations (e.g., "Create named groups of products" in Fig. 6; Fig. 16; Fig. 19; paragraphs 30, 78-79, and 84-85). An allocation interface that enables the sales administrator to assign and/or reassign an allocation method for each defined product, the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method (e.g., "Create allocation method(s)" in Fig. 6; Fig. 8; paragraphs 30 and 46-58). A computer program summarizes analysis statistics by allocation method, time, and products (e.g., "Summarize Analysis Statistics" in Fig. 5; paragraphs 29-30). A statistics interface displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account (e.g., "Summarize Analysis Statistics" in Fig. 5; paragraphs 29-30). A computer program allocates a launch quantity to each account for a new product launch and

allocates product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations (e.g., "Assign launch quantity to each account" in Fig. 6; paragraphs 30, 34, 64, and 68-69).

Claim 13 relates to a method in a system for use by a sales administrator for allocating product to a plurality of locations (e.g., Figs. 5-6; paragraphs 5 and 17-19). Input is received, via an accounts interface, from the sales administrator defining accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations (e.g., "Create named groups of accounts" in Fig. 6; Fig. 18; paragraphs 30 and 82-83). Input is received, via a products interface, from the sales administrator defining products for allocation among said plurality of locations (e.g., "Create named groups of products" in Fig. 6; Fig. 16; Fig. 19; paragraphs 30, 78-79, and 84-85). Input is received, via an allocation interface, from the sales administrator assigning and/or reassigning an allocation method for each defined product, the allocation method being either a static allocation method or a dynamic allocation method (e.g., "Create allocation method(s)" in Fig. 6; Fig. 8; paragraphs 30 and 46-58). Analysis statistics are summarized by allocation method, time and products (e.g., "Summarize Analysis Statistics" in Fig. 5; paragraphs 29-30). The summarized analysis statistics are displayed, via a statistics interface, the statistics interface enabling the sales administrator to perform a historical analysis of product performance by account (e.g., "Summarize

Analysis Statistics" in Fig. 5; paragraphs 29-30). A launch quantity is allocated to each account for a new product launch and allocating product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations (e.g., "Assign launch quantity to each account" in Fig. 6; paragraphs 30, 34, 64, and 68-69).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-9 and 11-23 are "obvious" over Capazario et al. (U.S. Patent

Publication No. 2003/0154141) in view of Huang et al. (U.S. Patent No. 6,151,582) and

further in view of Dovolis (U.S. Patent Publication No. 2001/0034609) under 35 U.S.C.

§ 103(a).

(VII) ARGUMENT

Claims 1-9 and 11-23 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Capazario et al. (U.S. Patent Publication No. 2003/0154141) in view of Huang et al. (U.S. Patent No. 6,151,582) and further in view of Dovolis (U.S. Patent Publication No. 2001/0034609). This rejection should be reversed for at least the following reasons.

In order for a claim to be rejected under 35 U.S.C. § 103(a), each and every limitation of that claim must be taught or suggested in a reference or combination of references, and such teachings and/or suggestions must be combinable. The PTO bears the burden of establishing a *prima facie* case of obviousness. The alleged three-way combination of Capazario, Huang, and Dovolis does not teach or suggest each and every limitation of independent claims 1 or 13, or their respective dependents. For example, the prior art of record, alone and in combination, does not teach or suggest allocating "a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations," as required by claims 1 and 13 and their respective dependents. Thus, the alleged three-way combination of Capazario, Huang, and Dovolis fails to render obvious the invention defined by the claims.

Moreover, the alleged motivation for combining the references is improper, at least insofar as it appears to be based on mere conclusory statements without any clearly

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articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness. Indeed, the combination appears to be nothing more than an attempted

hindsight reconstruction of Applicant's claims. For this additional reason, the alleged

combination cannot render obvious the claimed invention.

From the outset, Applicant notes that none of the three applied prior art references

appear to be related to each other -- much less the claimed invention -- which surely

argues against the appropriateness of a § 103 rejection. For example, Applicant notes

that Capazario, the base reference in this obviousness-type rejection, appears to be

unrelated both to the invention of the claims and to the secondary reference (Huang), and

the tertiary reference (Dovolis). This is because Capazario primarily relates to a store-

specific inventory management system to be used by planners at that particular store, and

not to a system for use by a sales administrator for allocating product to a plurality of

locations. Capazario appears to be designed to use image recognition techniques to direct

store personnel to rearrange products already present at the site to make them look more

aesthetically pleasing. Thus, in Capazario, and in any alleged combination based on

Capazario, the ability to manage the <u>actual amount</u> and <u>allocation</u> of stock within a

location appears to be secondary at best to managing its <u>physical appearance</u> within a site

-- to say nothing of the ability to manage stock across a plurality of locations as required

by claim 1. Thus, it appears to be improper to combine Capazario with Huang, which

discloses a decision support system for managing an agile supply chain including a server

side and a client side, and to apply Capazario, Huang, and/or their alleged combination to

the invention of the claims.

Furthermore, although Dovolis relates to techniques for managing asset information, the assets that are managed by Dovolis are wholly unrelated to the techniques for adjusting the physical appearance of stock in a store (Capazario) and/or supply chain management techniques (Huang). More particularly, the asset information management techniques of Dovolis allow a consumer to register warranty information at a point-of-sale and to later access, modify, and append purchase information via the Internet (see paragraph 13 of Dovolis). Dovolis is unconcerned with both the physical appearance of goods within a location and the supply chain for providing the goods to the location -- much to the contrary, Dovolis actually is directed to managing what happens to the information that is available to the consumer <u>after</u> the goods are taken off of the shelves and <u>after</u> the goods are removed from the supply chain, in that it is directed to registering warranty information at a point-of-sale once the product is purchased and then enabling access to related information at a later time and at a different location.

Page 4 of the Final Office Action alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention "to have included the features of Dovolis within the collective teachings of Capazario and Huang with the motivation of providing a system and method for managing persona and/or business assets." As shown above, however, Dovolis manages a completely different kind of "asset" in a completely different manner than Capazario, Huang, and the alleged Capazario/Huang combination. The portions of Dovolis cited in the Final Office Action actually argue <u>against</u> its introduction to the alleged Capazario/Huang combination, since (1) paragraph 2 of Dovolis states that asset information is automatically entered at a point-of-sale and that

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warranty registration information is accessible over the Internet, and (2) Fig. 9 of Dovolis actually shows a <u>consumer-based</u> process for inputting information about an item already in the consumer's possession. In marked contrast, and as well-covered above, Capazario relates to managing the physical appearance of goods to be sold at a point-of-sale and Huang relates to managing a supply chain (that is, up until the product is sold).

In a nutshell, Capazario is concerned with how physical goods appear in a location, Huang is concerned with how physical goods arrive at a location, and Dovolis is concerned with information pertaining to goods that are being or already have been sold. Simply stated, then, there is no reason why one of ordinary skill in the art at the time of the invention would have looked at Capazario, Huang, and Dovolis when attempting to design any system/method -- much less the invention of claims 1 and 13. Such can only be the result of the resort to improper hindsight. Indeed, the Final Office Action is practically silent regarding any reasoning as to why one of ordinary skill in the art at the time of the invention would have made such modifications. Bare assertions that such modifications would have been obvious are no substitute for clear and articulated reasoning that has at least some rational underpinning. For at least above-noted reasons, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have combined the teachings of Capazario, Huang, and Dovolis at all, much less in the manner alleged in the Final Office Action, thus making the outstanding § 103 rejection improper.

With respect to the specific features recited in the claims, as noted above, independent claims 1 and 13 each require allocating "a launch quantity to each account

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for a new product launch and allocates product to each account for replenishment of a

previously launched product, based on the allocation method assigned to the product and

in accordance with a predefined business allocation goal provided by the sales

administrator for the plurality of locations." The Final Office Action admits that

Capazario fails to teach or suggest a computer program that allocates a launch quantity to

each account for a new product launch and allocates product to each account for

replenishment of a previously launched product based on the allocation method assigned

to the product, and introduces Huang and Dovolis to make up for this deficiency of

Capazario. However, Capazario, Huang and Dovolis, alone and in combination, still fail

to disclose this feature of claims 1 and 13 and thus still fail to render obvious the claimed

invention.

The paragraph that bridges pages 2-3 of the Final Office Action admits that

Capazario fails to disclose a number (indeed, almost all) of features of independent

claims 1 and 13, and introduces Huang to help make up for the numerous deficiencies.

However, Huang merely discloses a supply management decision process that

presumably accounts for dynamic replanning, vendor managed replenishment (VMR)

strategic planning, and replenishment planning. None of these factors constitute a

predefined business allocation goal provided by the sales administrator for the plurality of

locations as required by claims 1 and 13. Although Huang makes reference to certain

plans and plan data (e.g., Aggregate Production Plan Data, Production-Sales-Inventory

Plan, Master Production Plan, etc.), such plans appear to be static reports or mere contract

requirements rather than a predefined business allocation goal. Furthermore, the user

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requirements discussed in Huang appear to guide the design of the tool itself, rather than to cause a computer program to behave in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations.

To make up for yet further deficiencies of the alleged Capazario/Huang combination, the Final Office Action employs a piecemeal "examination" of the independent claims, abstracting particular words from the various claim limitations and introducing Dovolis as allegedly disclosing these words. In fact, pages 3-4 of the Final Office Action improperly divorces the following passages from the context in which they appear: "to a plurality of locations," "each account corresponding to at least on said location in said plurality of locations," "among said plurality of locations," "and/or reassign," "the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method," and "in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations."

Applicant respectfully submits that this sort of piecemeal claim "examination" is incorrect as a matter of patent law, since all claim limitations must be considered, and since all limitations must be considered in whole and not in part. Although page 2 of Final Office Action implies that these abstractions are somehow confusing and are less than fully understood, Applicant notes that proper consideration of the claim limitations as a whole would have helped to resolve any confusion and would have provided a better understanding of each particular claim and of each particular limitation in each particular claim.

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In any case, paragraph 91 of Dovolis is cited for these features, even though it is clear that this portion does not describe any of the further abstractions -- alone or in their proper context -- contrary to what is alleged in the Final Office Action. The entirety of paragraph 91 of Dovolis is reproduced herein for convenience:

> "Typically, the vendor or retailer 22 can transmit either electronically or physically vendor manuals associated with purchase items (e.g., consumer 20 manuals, parts manuals, operation manuals, and any warranty information). This is done initially and is updated continuously by the asset management system 10 as new vendors and new products are added to the asset management system's inventory."

This portion merely teaches that the asset management system of Dovolis can be updated (e.g., with vendor manuals and information associated therewith) as new saleable products are made available. Clearly, this portion of Dovolis does <u>not</u> describe any of the Final Office Action's laundry list of abstracted claim terms, or any of Applicant's claimed features, at all. Thus, this portion of Dovolis <u>fails</u> to make up for the above-noted deficiencies with respect to Capazario and Haung, and the alleged three-way Capazario/Huang/Dovolis combination, even if proper, similarly <u>fails</u> to render obvious the invention of claims 1 and 13.

Indeed, even if this combination were proper, it still would not render obvious the claimed invention. That is, even if the alleged three-way combination were appropriate, the resultant combination would merely manage warranty information (and thus not the supply/resupply of products as claimed), and would be consumer driven at a point-of-sale (and thus not manufacturer driven at a plurality of retailer locations as claimed). As such, even if forcibly combined, the alleged three-way combination of Capazario, Huang, and Dovolis would be completely different from the claimed invention.

For at least the foregoing reasons, Applicant respectfully submits that claims 1 and 13 clearly and patentably distinguish over the cited prior art. In addition, all of the dependent claims are believed to be allowable at least by virtue of their dependency on one of the independent claims.

Accordingly, Applicant respectfully requests that the rejection of claims 1-9 and 11-23 be reversed.
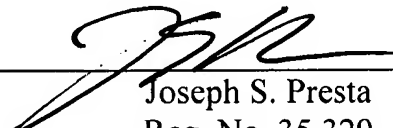
CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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(VIII)   CLAIMS APPENDIX

1. A system for use by a sales administrator for allocating product to a plurality of locations, comprising:

an accounts interface for allowing the sales administrator to define accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations;

a products interface for allowing the sales administrator to define products for allocation among said plurality of locations;

an allocation interface that enables the sales administrator to assign and/or reassign an allocation method for each defined product, the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method;

a computer program that summarizes analysis statistics by allocation method, time and products;

a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account; and

a computer program that allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations.

2. The system of claim 1, further including a redistribute procedure that uses product availability measures to redistribute the allocations based on product availability and allocation methods used.

3. The system of claim 1, further including an allocation interface that shows the allocations for a selected product.

4. The system of claim 3, wherein the allocation interface enables the sales administrator to make manual adjustments to the computer generated allocations.

5. The system of claim 1, further including a procedure that loads the allocations into an order processing system.

6. The system of claim 1, wherein the products interface enables products groups to be defined.

7. The system of claim 1, wherein the accounts interface enables account groups to be defined, and the allocation interface enables an account group to be selected for display of the allocation.

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8. The system of claim 2, wherein the redistribute procedure takes product advertisement information into account when redistributing allocations.

9. The system of claim 8, further including an interface to an ad planning system which provides the advertisement information to the system.

10. Cancelled.

11. The system of claim 1, further including a logging function that enables display of revision history for allocations.

12. The system of claim 1, wherein the statistics interface displays historical information for related products for use by the sales administrator in making allocation decisions.

13. In a system for use by a sales administrator for allocating product to a plurality of locations, a method comprising:

receiving, via an accounts interface, input from the sales administrator defining accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations;

receiving, via a products interface, input from the sales administrator defining products for allocation among said plurality of locations;

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receiving, via an allocation interface, input from the sales administrator assigning

and/or reassigning an allocation method for each defined product, the allocation method

being either a static allocation method or a dynamic allocation method;

summarizing analysis statistics by allocation method, time and products;

displaying, via a statistics interface, the summarized analysis statistics, the

statistics interface enabling the sales administrator to perform a historical analysis of

product performance by account; and

allocating a launch quantity to each account for a new product launch and

allocating product to each account for replenishment of a previously launched product,

based on the allocation method assigned to the product and in accordance with a

predefined business allocation goal provided by the sales administrator for the plurality of

locations.

14. The method of claim 13, further comprising redistributing, via a redistribute

procedure that uses product availability measures, the allocations based on product

availability and allocation methods used.

15. The method of claim 13, further comprising showing, via an allocation

interface, the allocations for a selected product.

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16. The method of claim 15, further comprising enabling the sales administrator to make manual adjustments to the computer generated allocations via the allocation interface.

17. The method of claim 13, further including a procedure that loads the allocations into an order processing system.

18. The method of claim 13, wherein the products interface enables products groups to be defined.

19. The method of claim 13, wherein the accounts interface enables account groups to be defined, and the allocation interface enables an account group to be selected for display of the allocation.

20. The method of claim 14, wherein the redistribute procedure takes product advertisement information into account when redistributing allocations.

21. The system of claim 20, further comprising providing an interface to an ad planning system which provides the advertisement information to the system.

22. The method of claim 13, further comprising providing a logging function that enables display of revision history for allocations.

23. The method of claim 13, wherein the statistics interface displays historical

information for related products for use by the sales administrator in making allocation

decisions.

(IX)   EVIDENCE APPENDIX

None.

(X) <u>**RELATED PROCEEDINGS APPENDIX**</u>

None.

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